

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

ORENTHIAL JAMES CREAR	§	
v.	§	CIVIL ACTION NO. 6:16cv458
JANET GATES, DISTRICT CLERK, CHEROKEE COUNTY, TEXAS	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE  
AND ENTERING FINAL JUDGMENT

The Relator Orenthial James Crear, proceeding *pro se*, filed this application for the writ of mandamus against Janet Gates, the district clerk of Cherokee County, Texas. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Crear asked that this Court issue a writ of mandamus ordering the Cherokee County district clerk to transmit his state habeas corpus application, any answer filed, and a certificate reciting the date upon which the finding was made to the Texas Court of Criminal Appeals. He contends that the failure to transmit his state habeas petition is a violation of Article 11.07, sec. 3(a) of the Texas Court of Criminal Procedure.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the application for mandamus relief be denied for want of jurisdiction. The Magistrate Judge determined that federal district courts lack jurisdiction to issue the writ of mandamus against state or county actors or agencies. Moye v. Clerk, DeKalb County Superior Court, 474 F.2d 1275, 1276 (5th Cir. 1973). The District Clerk of Cherokee County, Texas is not an officer or employee of the

United States or any agency thereof, and therefore is not subject to the mandamus jurisdiction of the federal district court. Hicks v. Brysch, 989 F.Supp. 797, 811 (W.D.Tex. 1997).

A copy of the Magistrate Judge's Report was sent to the Plaintiff at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). It is accordingly

**ORDERED** that the Report of the Magistrate Judge (docket no. 8) is **ADOPTED** as the opinion of the District Court. It is further

**ORDERED** that the above-styled application for the writ of mandamus is **DISMISSED WITH PREJUDICE** for want of jurisdiction, but without prejudice to the Relator's right to seek such relief as may be available in the courts of the State of Texas. It is further

**ORDERED** that any and all motions which may be pending in this action are hereby **DENIED**.

**So Ordered and Signed**

Apr 18, 2017



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Ron Clark, United States District Judge